

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

SLAB-PRO INC.,

Plaintiff,

CASE NO.

v.

MAX PROTECTION LLC,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Slab-Pro, Inc. (hereinafter "Plaintiff") for its Complaint against Max Protection LLC (hereinafter "Defendant") alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for design patent infringement under federal law.

PARTIES

2. Plaintiff is a New York corporation with a principal place of business at 3844 Hill Road, North Tonawanda, New York 14120.

3. Plaintiff is in the business of marketing, offering for sale, and the sale of protective covers for books, including comic books.

4. On information and belief, Defendant is a limited liability company organized under the laws of Washington with a principal place of business at 5862 S. 194th St., Kent, Washington 98032.

5. On information and belief, Defendant is in the business of marketing, offering for sale, and the sale of protective covers for comic books.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and is hereinafter more fully described.

7. Venue is proper in this district pursuant to 28 U.S.C. §1391 and §1400(b).

8. Defendant has committed and continues to commit acts of infringement in violation of 35 U.S.C. §271, and infringing products are sold in the State of New York, including in this District.

BACKGROUND

9. Plaintiff is in the business of marketing, offering for sale, and selling the “Slab-Pro,” which is a silicon rubber graded comic protector designed to protect the border of a comic book case without diverting attention from the comic or grading label.

10. On October 4, 2011, the United States Patent and Trademark Office duly and lawfully issued U.S. Design Patent No. D646,322 (“the ‘D322 Patent’). Plaintiff is the owner by assignment of all right, title, and interest in the ‘D322 Patent. A true and correct copy of the ‘D322 patent is attached hereto as **Exhibit A**.

11. Plaintiff’s ownership of the ‘D322 Patent includes, without limitation, the right to enforce the ‘D322 Patent and the right to recover damages, including past damages, for infringement of the ‘D322 patent and the right to injunctive relief.

12. Defendant has offered for sale and/or sold in the United States a product, the “Graded Comic Slab Defender,” with a design disclosed and claimed by the ‘D322 patent and infringes the patent.

13. Defendant's infringing "Graded Comic Slab Defender" is available for purchase on Defendant's website, which is accessible and directed to consumers in this District as well as directly through retail outlets in this District.

14. Defendant does not have any license or authorization to offer to sell or to sell products with a design disclosed and claimed by the 'D322 Patent.

15. Defendant has infringed and continues to infringe the 'D322 Patent by selling and/or offering to sell the infringing products without Plaintiff's authorization or license.

16. Defendant has sold and continues to sell products bearing the design disclosed and claimed in the 'D322 Patent. Plaintiff directly provided Defendant notice of its infringement in writing on or about November 26, 2013 by letter and Defendant acknowledged receipt of this letter.

17. On information and belief, Defendant has derived and received, and will continue to derive and receive gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to Plaintiff. Plaintiff has been damaged by Defendant's infringing acts.

18. Plaintiff has suffered and continues to suffer irreparable injury, for which Plaintiff has no adequate remedy at law.

COUNT I
PATENT INFRINGEMENT (35 U.S.C. §271)

19. Plaintiff repeats each and every allegation set forth herein in the preceding paragraphs as though fully set forth herein.

20. Defendant has infringed and continues to infringe the 'D322 Patent by using, selling and/or offering to sell in the United States the "Graded Comic Slab Defender," which embodies the design disclosed and claimed by the 'D322 Patent.

21. Defendant has been put on notice, in writing, of its infringing acts, yet willfully continues to sell the infringing product.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief, as follows:

- A. A judgment that Defendant has willfully infringed Plaintiff's asserted patent under 35 U.S.C. §271;
- B. An order and judgment preliminarily and permanently enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in concert or participation with Defendant, from directly or indirectly infringing the 'D322 Patent;
- C. A judgment awarding Plaintiff all damages adequate to compensate for Defendant's infringement of the 'D322 Patent, and in no event less than a reasonable royalty for Defendant's acts of infringement, including all pre-judgment and post judgment interest at the maximum rate permitted by law;
- D. A judgment awarding Plaintiff all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. §284, together with prejudgment interest;
- E. Actual damages suffered by Plaintiff as a result of Defendant's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;
- F. Costs of this action, together with reasonable attorneys' fees and disbursements;
- G. Any other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues properly triable by jury in this action.

RESPECTFULLY SUBMITTED this 23rd day of June 2014.

s/ Dariush Keyhani

Dariush Keyhani

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